

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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|--|---|------------|
| In the Matter of:  | ) |            |
|  | ) |            |
| MCC Iowa LLC   | ) | CSR 6482-E |
|  | ) |            |
|  | ) |            |
| Petition for Determination of Effective Competition<br>for Six Local Franchise Areas | ) |            |

**MEMORANDUM OPINION AND ORDER**

**Adopted: September 28, 2005**

**Released: September 30, 2005**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. MCC Iowa, LLC and Mediacom Iowa LLC (“Mediacom”) has filed with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination of effective competition in the Communities listed in Attachment A. Mediacom alleges that its cable system serving these Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”),<sup>1</sup> and the Commission’s implementing rules, and is therefore exempt from cable rate regulation. More particularly, Mediacom claims the presence of effective competition in the Communities stems from the competing services provided by two unaffiliated direct broadcast satellite (“DBS”) providers, DirecTV and Dish Network. Mediacom claims it is subject to effective competition in these Communities under the “competing provider” effective competition test set forth in Section 623(1)(1)(B) of the Communications Act.<sup>2</sup> The petition, as it relates to the City of Bettendorf, Iowa (the “City” or “Bettendorf”), is opposed by that community. Mediacom filed a reply.

**II. DISCUSSION**

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,<sup>3</sup> as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission’s rules.<sup>4</sup> The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective

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<sup>1</sup> 47 U.S.C. § 543(1).

<sup>2</sup> See 47 U.S.C. § 543(1)(1)(B).

<sup>3</sup> 47 C.F.R. § 76.906.

<sup>4</sup> See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

competition is present within the relevant franchise area.<sup>5</sup>

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.<sup>6</sup> Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.<sup>7</sup> The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.<sup>8</sup> In view of this DBS growth data, we conclude that the population of the Communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.<sup>9</sup> We further find that Mediacom has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. The Cable Operator sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis. Mediacom asserts that they are the largest MVPD in the Communities because their subscribership exceeds the aggregate DBS subscribership for those franchise areas. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied with regard to Blue Grass, Davenport, Eldridge, Long Grove, and Hampton, Iowa. Based on the foregoing, we conclude that the Mediacom has submitted sufficient evidence demonstrating that its cable system serving these Communities set forth on Attachment A are subject to competing provider effective competition.

5. The City of Bettendorf argues that Mediacom has not met its burden of demonstrating that the number of DBS subscribers within the City exceeds 15 percent of the households for the franchise

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<sup>5</sup> See 47 C.F.R. §§ 76.906 & 907.

<sup>6</sup> 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

<sup>7</sup> See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

<sup>8</sup> *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, 20 FCC Rcd 2755, 2793 (2005).

<sup>9</sup> See 47 C.F.R. § 76.905(g).

area.<sup>10</sup> Bettendorf contends that there is no reason for Mediacom to reference “occupied housing units” instead of “total housing units” minus those units classified as seasonal, when calculating the DBS providers’ penetration level.<sup>11</sup> Although Mediacom indicates that the number of occupied housing units is 12,474, Bettendorf argues that, accepting that housing for seasonal, recreational, or occasional use is not included in calculating the correct number of occupied housing units, the total number of housing units in Bettendorf should be reduced by 65, which represents the number of housing units for seasonal, recreational, or occasional use.<sup>12</sup> It also argues that vacant housing units are neither abandoned nor dilapidated, but rather simply the result of normal sales of units as residents come and go from the community.<sup>13</sup> It asserts that because of these facts the total housing units within Bettendorf should not be reduced by those which were obviously vacant only temporarily and during the short period in which the census was taken.<sup>14</sup> Additionally, Bettendorf argues that Mediacom should not be permitted to utilize census information which is in excess of four years old because 607 “housing units” have been added to the residential housing stock since the 2000 census and such an increase reduces the DBS penetration level below the 15 percent minimum threshold.<sup>15</sup>

6. In its Reply, Mediacom states that Bettendorf bears the burden of coming forward with evidence that the subscriber number is below the required threshold of 15 percent and the City has failed to present such evidence.<sup>16</sup> Mediacom argues that Bettendorf does nothing more than attempt to discredit Mediacom’s petition by asserting that the 2000 Census data should not be used because there has been growth and the Census is outdated, but Bettendorf presents no evidence of that growth.<sup>17</sup> The affidavit from the city building official that asserts that 607 building permits for new residential housing units were issued between 2000 and 2004 fails to show that there has been an increase in the number of occupied households within Bettendorf’s franchise area and does not provide a way of determining how many of these building permits resulted in occupied households.<sup>18</sup> With regard to Bettendorf’s argument that Mediacom should not have used occupied housing units in its calculations for determining DBS penetration, Mediacom argues that Bettendorf simply makes bare statements that the Census data should not be used because Bettendorf has issued some building permits and Bettendorf is a wealthy community.<sup>19</sup> Mediacom states that Bettendorf has failed to show that there are any less unoccupied housing units than there were when the Census was taken, whether it be because the housing units are in

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<sup>10</sup> Opposition at 1-2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 2. Bettendorf states that the total number of housing units (13,044) minus seasonal, recreational, or occasional use (65) would equal 12,979, the correct number of occupied housing units.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 3. Bettendorf states that between the 2000 census and 2004, the City has added 607 housing units (single and multi-family) to the residential housing stock. It argues that even if Mediacom’s use of occupied units is appropriate, adding 607 units yields a total housing unit number of 13,081. Bettendorf additionally points out that Mediacom indicated that DBS providers serve a total of 1,927 customers in Bettendorf. It further states that 1,927 divided by 13,081 is 14.73% , which shows that the 15% percent test is not met. *See* Opposition at 3.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

<sup>18</sup> Reply at 2.

<sup>19</sup> *Id.*

transition from one owner to another, or whether they are abandoned property.<sup>20</sup> Mediacom submits that Census 2000 provides a reliable, unbiased, and consistent source of household data that is appropriate for use in connection with effective competition determinations and they are confident that the DBS penetration for the City is over 15 percent of the current population.<sup>21</sup>

7. We reject Bettendorf's argument that the term "household" should include vacant housing units. The Commission has determined, that for effective competition purposes, the term "household" has the same meaning as that used by the U.S. Census Bureau.<sup>22</sup> The U.S. Census Bureau defines "households" as "[a] person or group or persons who live in a housing unit" or "occupied housing units."<sup>23</sup> The Commission has long distinguished between vacant and occupied homes in reference to the effective competition tests.

8. With regard to its concerns that the use of 2000 Census household data is inappropriate since Bettendorf is a growing area and the 2000 Census data may be outdated, the City offers that between the 2000 U.S. Census and November 24, 2004, the City added 607 "housing units", including single family and multi-family units to the residential housing stock. The City offers data based on city records from the Building Inspections Division for the City of Bettendorf.<sup>24</sup> Although the Commission will accept more recent household data that is demonstrated to be reliable, it appears that Bettendorf indicated that 607 "housing units" were added to the community. Bettendorf, however, supplies no information regarding how many "occupied housing units", or households, have been added since the 2000 Census. As such, the resulting data provided by Bettendorf would not support a finding that this data equated to occupied households, as does the 2000 U.S. Census occupied household data used by Mediacom. Without more, we are required to find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in that community.<sup>25</sup> Therefore the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable system serving the City of Bettendorf is subject to effective competition.

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See *Implementation of Cable Act Reform Provision of the Telecommunications Act of 1996*, 9 FCC Rcd 4316, 4324 (1994).

<sup>23</sup> See [www.census.gov/dmd/www/glossary.html](http://www.census.gov/dmd/www/glossary.html).

<sup>24</sup> Opposition at Exhibit D.

<sup>25</sup> Bettendorf may file a petition for reconsideration of this order or a petition for recertification which adequately documents the number of households in the City of Bettendorf. See 47 C.F.R. § 1.106; 47 C.F.R. § 76.916.

**III. ORDERING CLAUSES**

9. Accordingly, **IT IS ORDERED** that the petition filed by MCC Iowa, LLC for a determination of effective competition in the Communities listed in Attachment A **IS GRANTED**.

10. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the cable operator **IS REVOKED**.

11. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.<sup>26</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker  
Deputy Chief, Policy Division, Media Bureau

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<sup>26</sup>47 C.F.R. § 0.283.

## Attachment A

Cable Operator Subject to Competing Provider Effective Competition

## MCC IOWA LLC: CSR 6482-E

| Community  | CUIDS  | CPR*   | 2000   | DBS                     |
|------------|--------|--------|--------|-------------------------|
|            |        |        | Census | Households <sup>+</sup> |
| Bettendorf | IA0031 | 15.45% | 12,474 | 1,927                   |
| Blue Grass | IA0246 | 32.96% | 443    | 146                     |
| Davenport  | IA0030 | 15.75% | 39,124 | 6,163                   |
| Eldridge   | IA0158 | 19.39% | 1,501  | 291                     |
| Long Grove | IA0241 | 20.00% | 205    | 41                      |
| Hampton    | IA0453 | 17.75% | 631    | 112                     |

CPR= Percent DBS penetration